



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Jason Torchinsky, Esq.
Shawn Sheehy, Esq.
HoltzmannVogelJosefiak PLLC
45 North Hill Drive
Suite 100
Warrentown, VA 20186

MAR 22 2013

RE: MUR 6542
Mullin for Congress
and Debbie Dooley in her official
capacity as treasurer
Markwayne Mullin

Dear Messrs. Torchinsky and Sheehy:

On March 30, 2012, the Federal Election Commission notified your clients, Markwayne Mullin, and Mullin for Congress and Debbie Dooley in her official capacity as treasurer (the "Mullin Committee"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your clients, on March 12, 2013, the Commission voted to dismiss the allegations that your clients violated 2 U.S.C. § 441b(a) in connection with the making or receiving of corporate in-kind contributions. The Commission reminds your clients, pursuant to 2 U.S.C. § 441b(a) concerning the prohibition on corporate contributions, to take steps to ensure that their conduct is in compliance with the Act and Commission regulations. The Commission also dismissed the allegations that the Mullin Committee violated 2 U.S.C. § 441a(f) in connection with the receipt of excessive contributions. Based on information before the Commission, however, it appears that the Mullin Committee may have accepted excessive contributions in violation of 2 U.S.C. § 441a(f). The Commission cautions the Mullin Committee to take steps to ensure that its conduct is in compliance with the Act and the Commission's regulations. Finally, the Commission found no reason to believe the Mullin Committee violated 2 U.S.C. § 441b by receiving prohibited corporate contributions from Superior Wood Floors, Inc., Branchcomb, Inc., Reco Electric Co., and Mother Nature's Inc. The Factual and Legal Analyses, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed.

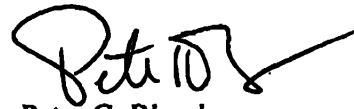
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Mr. Jason Torchinsky, Esq.
Mr. Shawn Sheehy, Esq.
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Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009).

If you have any questions, please contact Dominique Dillenseger, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Pete Blumberg", with a long horizontal flourish extending to the right.

Peter G. Blumberg
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Mullin for Congress and Debbie Dooley,
in her official capacity as treasurer
Markwayne Mullin
Mullin Plumbing, Inc.

MUR 6542

I. INTRODUCTION

The Complaint alleges that Mullin for Congress and Debbie Dooley in her official capacity as treasurer ("Committee") violated the Federal Election Campaign Act of 1971, as amended, ("the Act") by accepting impermissible contributions. After reviewing the Complaint, responses, and publicly available information, the Commission dismissed or found no reason to believe as to the allegations raised in the Complaint and cautioned the respondents, as described below.

II. FACTUAL BACKGROUND

Markwayne Mullin was a candidate in the 2012 primary, primary runoff, and general elections for the U.S. House of Representatives from the Second Congressional District of Oklahoma. The Committee is Mullin's principal campaign committee. Mullin is the president, CEO, and sole shareholder of Mullin Plumbing, Inc., an Oklahoma corporation. Mullin Resp. at 2 (May 16, 2012).¹

The Complaint alleges that the Committee made an "excessive number" of redesignations and reattributions of contributions and accepted impermissible direct contributions including: (1) contributions in excess of the \$2,500 per election limit, including unidentified contributions

¹ Counsel for Markwayne Mullin and the Committee submitted a joint response on behalf of these respondents. Mullin Plumbing did not submit a response. This "Mullin Response" and the responses of Superior Wood Floors, Inc., Mother Nature's Inc., Reco Electric Co., and Branchcomb, Inc. are discussed in more detail below as they pertain to each allegation.

1 of \$10,000 or more; (2) unidentified contributions from “businesses” that were “redesignated” as
2 contributions from individuals; and (3) direct corporate contributions from Superior Wood
3 Floors, Inc., Mother Nature’s Inc., Reco Electric Co., and Branchcomb, Inc. Compl. (Mar. 19,
4 2012). The Complaint also alleges that Mullin Plumbing made and the Committee accepted
5 in-kind corporate contributions when the Committee used Mullin Plumbing resources.

6 According to the Complaint, the Committee used Mullin Plumbing “storefront images, logo-
7 bearing Mullin plumbing vehicles, and business employees” in the Committee’s print and video
8 advertising. *Id.*

9 III. ANALYSIS

10 A. Alleged Excessive Contributions and Direct Corporate Contributions

11 Under the Act and Commission regulations, contributions to a candidate’s committee are
12 subject to source and amount limitations. *See, e.g.,* 2 U.S.C. §§ 441a, 441b(a); 11 C.F.R.
13 §§ 110.1(a), (b)(1), 114.2(b)(1). Corporations are prohibited from making contributions in
14 connection with a federal election, and candidates are prohibited from knowingly accepting or
15 receiving corporate contributions. *See* 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(b)(1). The
16 contribution limit in 2011-2012 is \$2,500 per election to a candidate’s committee. *See* 2 U.S.C.
17 § 441a(a)(1); <http://www.fec.gov/pages/brochures/contriblimits.shtml>. Candidates and
18 committees are prohibited from knowingly accepting prohibited contributions in violation of this
19 limit. 2 U.S.C. § 441a(f).

20 Committee treasurers are responsible for examining all contributions received for
21 evidence of illegality and for ascertaining whether contributions received, when aggregated with
22 other contributions from the same contributor, exceed the contribution limitations. 11 C.F.R.
23 § 103.3(b). Contributions that present genuine questions as to whether they were made by a
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1 prohibited source, such as a corporation, may be either deposited or returned to the contributor
2 within ten days. 11 C.F.R. § 103.3(b)(1). If the contribution is deposited, the treasurer must
3 make his or her best efforts to determine the legality of the contribution. *Id.* If the contribution
4 cannot be determined to be legal, the treasurer must refund the contribution within 30 days of
5 receipt. *Id.* Likewise, contributions that exceed the contribution limits may be either deposited
6 or returned to the contributor. 11 C.F.R. § 103.3(b)(3). If the contribution is deposited, the
7 treasurer may request redesignation or reattribution of the contribution by the contributor in
8 accordance with section 110.1 of the Commission's regulations. *Id.* If a redesignation or
9 reattribution is not obtained, the treasurer must refund the contribution within 60 days of receipt.
10 *Id.*

11 **1. Alleged Improper Redesignations and Reattributions**

12 The Complaint does not specify which redesignated or reattributed contributions violated
13 the Act. The Mullin Response observes that Mullin participated in three elections to which
14 contributions could be designated (primary, runoff, and general). Mullin Resp. at 5. It also
15 explains that the Committee received permissible contributions from a number of LLCs and sole
16 proprietorship accounts and joint contributions from spouses that were both redesignated and
17 reattributed.² *Id.* at 2.

18 Our review of the Committee's disclosure reports shows that, with the exception of two
19 contributions, the Committee properly and timely redesignated, reattributed, or refunded all

² In some circumstances, a contribution from an LLC is treated as a contribution from a partnership. *See* 11 C.F.R. § 110.1(g)(2). In those cases, the contribution must be attributed to both the partnership and each partner. *See* 11 C.F.R. § 110.1(e). In other circumstances, a contribution from an LLC must be attributed to the single member of the LLC. *See* 11 C.F.R. § 110.1(g)(4).

1 contributions. Those two are contributions from Rockin Z Ranch LLC and Darryl A. Christner
2 Family LLC.³

3 Rockin Z Ranch LLC made a \$10,000 contribution on September 8, 2011. On the same
4 date, the Committee designated \$7,500 of the amount (\$2,500 each for the primary, run-off, and
5 general elections), but did not refund the remaining \$2,500 contribution that was excessive until
6 May 10, 2012. Similarly, Darryl A. Christner Family LLC made a \$10,000 contribution on
7 September 26, 2011 and the Committee designated \$7,500 of the amount (for the primary, run-
8 off, and general elections) but did not refund the remaining \$2,500 that was excessive until May
9 21, 2012.

10 Thus, it appears the Committee failed to timely refund two excessive contributions in
11 violation of 2 U.S.C. § 441a(f). In light of the *de minimis* amount of those violations, the
12 Commission exercised its prosecutorial discretion and dismissed the allegations that Mullin for
13 Congress violated 2 U.S.C. § 441a(f) by accepting excessive contributions. *See Heckler v.*
14 *Chaney* 470 U.S. 821, 831 (1985). The Commission also cautioned the Committee for the
15 apparent violation of 2 U.S.C. § 441a(f).

16 2. Alleged Direct Corporate Contributions

17 The Complaint also alleges that the Committee received contributions from four
18 corporations: Reco Electric Co., Mother Nature's, Inc., Superior Wood Floors, Inc., and
19 Branchcomb, Inc.

20 The Committee admits, and its disclosure reports show, that the Committee received
21 contributions from two of these: Mother Nature's, Inc. and Superior Wood Floors, Inc. The

³ The Committee reported these as contributions from partnerships. *See* 11 C.F.R. § 110.1(g). We have no reason to believe these were impermissible contributions from LLCs electing treatment as corporations. *See* 11 C.F.R. § 110.1(g)(3).

1 Committee asserts, and its reports reflect, however, that these impermissible corporate
2 contributions were both timely refunded.⁴ See Mullin Resp. at 5-7. The Committee's 2011 July
3 Quarterly Report shows a receipt of \$1,000 from Superior Wood Floors, Inc. on June 27, 2011
4 and a refund in the same amount on June 30, 2011, well within the time period for permissible
5 refund. The Committee's 2011 October Quarterly Report shows a receipt of \$1,000 from Mother
6 Nature's, Inc. on July 15, 2011 and a refund in the same amount on the same day.⁵

7 Committee disclosure reports do not reflect contributions from Branchcomb, Inc. or Reco
8 Electric Co. Instead, the Committee reports receiving contributions from two similarly-named
9 entities: Reco Enterprises and Branchcomb Asphalt.

10 The Committee's 2011 July Quarterly Report shows a receipt of \$2,500 from Reco
11 Enterprises on June 29, 2011 and a refund in the same amount on June 30, 2011, well within the
12 permissible time period for refund.⁶ Counsel for Reco Enterprises and Reco Electric Co.
13 submitted copies of checks and deposit slips to corroborate the Committee's report. See Reco
14 Resp. at 1; Mullin Resp. at 5-7.

15 Gerald Branchcomb, president of Branchcomb, Inc., denied making a contribution to the
16 Committee. See Branchcomb Resp. at 1 (May 18, 2012). The Committee notes, and its reports

⁴ Mother Nature's and Superior Wood Floors both replied, acknowledging having made the contributions. Mother Nature's seems to indicate that its check was returned and it made a new check to Mullin. Superior Wood Floors does not reference a refund. See Mother Nature's, Inc. Resp. (June 26, 2012); Superior Woods, Inc. Resp. (May 23, 2012).

⁵ Sheila Ahrend of Mother Nature's, Inc. subsequently made a \$1,000 contribution to the Committee on August 23, 2011. See 2011 October Quarterly Report; Mother Nature's Resp. There is no allegation and we are aware of no evidence suggesting that the funds used to make this contribution were reimbursed from corporate sources.

⁶ Jerry Reed, owner of Reco Enterprises and Reco Electric Co., subsequently made a \$2,500 contribution to the Committee on July 1, 2011. See 2011 October Quarterly Report; Reco Resp. at 1 (June 18, 2012). There is no allegation and we are aware of no evidence suggesting that the funds used to make this contribution were reimbursed from corporate sources.

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1 show, that the Committee received a \$500 contribution from a different entity, Branchcomb
2 Asphalt. The Committee asserts that Branchcomb Asphalt is an unincorporated sole
3 proprietorship authorized to make contributions – and we have no evidence to the contrary.⁷
4 Mullin Resp. at 6.

5 Therefore, the Commission found no reason to believe that Mullin for Congress violated
6 2 U.S.C. § 441b by knowingly accepting prohibited corporate contributions from Superior Wood
7 Floors, Inc., Branchcomb, Inc., Mother Nature's Inc. and Rero Electric Co.

8 **B. Alleged Corporate In-Kind Contributions from Mullin Plumbing, Inc.**

9 It is undisputed that the Committee used in its campaign ads images of and footage of the
10 Mullin Plumbing name, employees, and facilities. A copy of a Committee brochure, submitted
11 with the Complaint, includes several photos of bright red Mullin Plumbing trucks. Similarly,
12 several of the Committee's television ads, uploaded on YouTube, feature Mullin interacting with
13 uniformed Mullin Plumbing employees while standing in front of Mullin Plumbing buildings and
14 Mullin Plumbing trucks.⁸

15 As discussed above, corporations are prohibited from making contributions in connection
16 with a Federal election, and candidates and committees are prohibited from accepting such
17 contributions. 2 U.S.C. § 441b; 11 C.F.R. § 114.2(b), (d). Further, an officer or director of any
18 corporation is prohibited from consenting to any such contribution. 2 U.S.C. § 441b; 11 C.F.R.
19 § 114.2(e). A "contribution" includes "anything of value made by any person for the purpose of

⁷ Though Branchcomb, Inc. and Branchcomb Asphalt share the same address, they appear to be separate entities. Gerald Branchcomb is president of Branchcomb Inc., a company that manufactures plastic products and industrial machinery. Cody Branchcomb is owner and president of Branchcomb Asphalt, which provides residential and commercial asphalt services. See <http://tulsaokasphalt.com/index.html>.

⁸ See, e.g., "Rancher. Father. Job Creator," available at <http://www.youtube.com/watch?v=Bidwm7EXEnY&feature=plcp>, "In His Own Words," available at http://www.youtube.com/watch?v=PJ_oGMDIYYE&feature=plcp.

1 influencing any election for Federal office.” 2 U.S.C. § 431(8)(A)(i); 11 C.F.R. § 100.52(a).
2 “Anything of value” includes all in-kind contributions, including the provision of goods or
3 services without charge or at a charge that is less than the usual and normal charge. *See*
4 11 C.F.R. § 100.52(d)(1).

5 1. **The Mullin Plumbing Name and Logo**

6 The Act and Commission regulations prohibit corporations from contributing anything of
7 value to committees. *See* 2 U.S.C. § 441b(a). Since a corporation’s name, trade name,
8 trademarks, and service marks are things of value owned by the corporation, the use of a
9 corporation’s name or marks by a committee may constitute an impermissible corporate
10 contribution. *See* MUR 6110 (Obama Victory Fund) Factual and Legal Analysis; MUR 6322
11 (Tommy Sowers); MUR 5578 (Wetterling).

12 The Mullin Response does not address the use of the Mullin Plumbing’s name and logo
13 by the Committee,⁹ but the amounts at issue appear likely to be *de minimis*. *See, e.g.,* MURs
14 6287, 6288, and 6297 (Liberatore for Congress) (dismissing matter where candidate used his
15 own company’s letterhead with the company’s logo for a letter advocating his election, based on
16 the likely insubstantial value of the letterhead and the apparent *de minimis* benefit provided to
17 the campaign); *see also* MUR 6331 (Comm. to Elect Shirley Gibson) (dismissing matter with a
18 cautionary letter where committee flyer announcing a fundraiser contained several corporate
19 logos and the event costs, attendance at the event, and the amounts raised were *de minimis*).
20 Accordingly, the Commission dismisses as a matter of prosecutorial discretion the allegation that

⁹ As discussed below, the Committee reports that Mullin reimbursed Mullin Plumbing for vehicles and salary; this payment does not appear to include an amount related to the value of the corporate name or logo.

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1 that Respondents violated 2 U.S.C. § 441b(a) in connection with the use of the Mullin Plumbing
2 name and logo in the Committee's ads. *See Heckler v. Chaney* 470 U.S. 821, 831 (1985).

3 **2. Mullin Plumbing Employees and Facilities**

4 The Mullin Response claims that the use of Mullin Plumbing facilities, vehicles, and
5 employees in the Committee's ads does not violate the Act because the activity qualifies as
6 permissible volunteer activity under 11 C.F.R. § 114.9(a). The Response also notes that Mullin
7 personally reimbursed Mullin Plumbing for the use of its facilities. The Committee reported this
8 as a \$1,425 reimbursement of an in-kind contribution from Mullin to the Committee for "vehicle
9 rental and salary," on March 31, 2012. *See Mullin Resp. at 4; 2012 April Quarterly Report.* The
10 Mullin Response additionally asserts that Mullin Plumbing employees who appeared in the
11 Committee's ads were volunteers and the complaint contains no allegations to the contrary.
12 Mullin's response further notes that employees spent less than four hours in total filming the ads
13 and that Mullin Plumbing's overhead costs were not increased as a result of this activity. *See*
14 *Mullin Resp. at 2-4.*

15 The safe harbor at 11 C.F.R § 114.9(a) states:

16 (1) Stockholders and employees of the corporation may, subject to the
17 rules and practices of the corporation and 11 CFR 100.54, make occasional,
18 isolated, or incidental use of the facilities of a corporation for individual volunteer
19 activity in connection with a Federal election and will be required to reimburse
20 the corporation only to the extent that the overhead or operating costs of the
21 corporation are increased. A corporation may not condition the availability of its
22 facilities on their being used for political activity, or on support for or opposition
23 to any particular candidate or political party. As used in this paragraph,
24 occasional, isolated, or incidental use generally means--

25
26 (i) When used by employees during working hours, an amount of activity
27 which does not prevent the employee from completing the normal amount of
28 work which that employee usually carries out during such work period; or
29 (ii) When used by stockholders other than employees during the working
30 period, such use does not interfere with the corporation in carrying out its normal
31 activities.

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(2) Safe harbor. For the purposes of paragraph (a)(1) of this section, the following shall be considered occasional, isolated, or incidental use of corporate facilities:

(i) Any individual volunteer activity that does not exceed one hour per week or four hours per month, regardless of whether the activity is undertaken during or after normal working hours; or

(ii) Any such activity that constitutes voluntary individual Internet activities (as defined in 11 CFR 100.94), in excess of one hour per week or four hours per month, regardless of whether the activity is undertaken during or after normal working hours, provided that:

(A) As specified in 11 CFR 100.54, the activity does not prevent the employee from completing the normal amount of work for which the employee is paid or is expected to perform;

(B) The activity does not increase the overhead or operating costs of the corporation; and

(C) The activity is not performed under coercion.

(3) A stockholder or employee who makes more than occasional, isolated, or incidental use of a corporation's facilities for individual volunteer activities in connection with a Federal election is required to reimburse the corporation within a commercially reasonable time for the normal and usual rental charge, as defined in 11 CFR 100.52(d)(2), for the use of such facilities.

The statement in the Mullin Response that the use of facilities was for only four hours and at a cost of only \$1,425 is not corroborated by affidavit or other documentation. In addition, the record evidence does not demonstrate whether the volunteer activity meets all the requirements for the volunteer safe harbor at 11 C.F.R. § 114.9(a). Under all the circumstances of this case, however, it would not be a prudent use of Commission's resources to pursue these issues. See, e.g., MUR 5497 (Wortman for Congress) (taking no action in matter where Commission did not know whether a \$300 reimbursement for a Committee's use of a company's phones and facsimile was in a "commercially reasonable time" and "in the amount of the normal and usual rental charge" as required under 11 C.F.R. § 114.9(d)). Accordingly, the Commission dismisses as a matter of prosecutorial discretion the allegation that that Respondents violated

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2 U.S.C. § 441b(a) in connection with the use of the Mullin Plumbing facilities, vehicles, and employees in the Committee's ads. *See Heckler v. Chaney* 470 U.S. 821, 831 (1985).

3. Conclusion

Therefore, the Commission exercised its prosecutorial discretion and dismissed the allegations that Mullin Plumbing, Markwayne Mullin, and the Committee violated 2 U.S.C. § 441b(a) in connection with the use of the Mullin Plumbing name, logo, facilities, vehicles, and employees in the Committee's ads. *See Heckler v. Chaney* 470 U.S. 821, 831 (1985). The Commission also reminded the respondents of the requirements under 2 U.S.C. § 441b(a).

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